

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

KARI WHITE,)	
Appellant,)	
)	
and)	CASE NO. 102327
)	
STATE OF IOWA)	
(SECOND JUDICIAL DISTRICT),)	
Appellee.)	

RULING AND ORDER

Appellant Kari White filed this State merit employee disciplinary action appeal with the Public Employment Relations Board (PERB), on May 17, 2019, pursuant to Iowa Code section 8A.415(2) and PERB rule 621–11.2(8)(8A,20). White alleges there was not just cause to support the State’s termination of her employment. The State subsequently moved to dismiss the appeal alleging White’s filing of her grievance to the Department of Administrative Services was untimely. The State also alleges that White is not a merit employee. The case was transferred to the Board in mid July 2019. White resists the State’s motion.

Oral arguments were limited to the timeliness issue only and heard by the Board via conference call on October 10, 2019. The State was represented by its attorney Anthea Galbraith and White was represented by attorney Mark Hedberg. Both parties filed pre-argument briefs.

Background Facts and Proceedings.

The State terminated White's employment as a Probationary Parole Officer on March 11, 2019. White had worked for the Second Judicial District of the Department of Correctional Services. She filed a grievance with the Second Judicial District challenging the merits of her termination. On April 30, 2019, the Second Judicial District denied her grievance.

On May 7, 2019, White filed a grievance with the Iowa Department of Administrative Services (DAS) alleging the State's termination of her employment was without just cause. By letter dated May 10, 2019, DAS General Counsel Jeffrey Edgar advised White that it was unable to process her grievance due to lack of jurisdiction on two grounds. First, Edgar advised White that DAS did not consider her position merit-covered as required for the grievance process outlined in Iowa Code section 8A.415(2). Second, DAS advised White that even assuming her position was merit-covered, she had failed to timely file her grievance with DAS within seven days of her termination as required by Iowa Code section 8A.415(2).

White filed this appeal with PERB on May 17, 2019. Based on both grounds asserted in DAS' May 10, 2019, response to White, the State filed its motion to dismiss with PERB on June 6, 2019.

Discussion.

In its motion, the State asserts White's section 8A.415(2) State merit employee disciplinary action appeal is untimely. For cases such as this, the appeal process to PERB is set out by statute and administrative rule. Iowa

Code section 8A.415(2) governs the appeal process and provides in relevant part,

8A.415 Grievance and discipline resolution procedures.

. . . .

2. Discipline resolution.

a. A merit system employee . . . who is discharged, suspended, demoted or otherwise receives a reduction in pay, except during the employee's probationary period, may bypass steps one and two of the grievance procedure and appeal the disciplinary action to the [DAS] director within seven calendar days following the effective date of the action. The director shall respond within thirty calendar days following receipt of the appeal.

b. If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. . . .

Iowa Code § 8A.415(2).

DAS subrule 61.2(6) provides, in relevant part:

11—61.2(8A) Appeals.

61.2(6) *Appeal of disciplinary actions.* Any nontemporary employee covered by merit system provisions who is suspended, reduced in pay within the same pay grade, disciplinarily demoted, or discharged, except during the employee's period of probationary status, may bypass steps one and two of the grievance procedure provided for in rule 11—61.1(8A) and may file an appeal in writing to the director for a review of the action within 7 calendar days after the effective date of the action. . . .

Iowa Admin. Code r. 11—61.2(6).

In motion, the State argues that White's grievance was not filed within the prescribed seven days following her termination on March 11, 2019.

We have previously concluded that compliance with the statutory timelines for grievance filing with DAS is mandatory and a prerequisite for PERB's jurisdiction of a section 8A.415(2) State merit employee disciplinary

action appeal. *See Kuhn & State (Comm'n of Veterans Affairs)*, 2004-MA-03 at 13. This applies to the seven-day deadline for the employee to file a third-step disciplinary action grievance appeal with DAS. *See Wise & State (Dep't of Human Servs.)*, 2015 ALJ 100006 (ALJ dismissed section 8A.415(2) disciplinary action grievance appeal for Grievant's failure to file the grievance with DAS within seven days of the date of termination).

An employee is required to file the grievance within seven days following the "effective date of the action." The statute and rules do not contemplate an interim review or adjudication from the time of the disciplinary action to the time of the grievance filing to DAS. In this case, the effective date is the date of White's termination on March 11, 2019, and not the date of the Second District's grievance denial on April 30, 2019, as argued by White. March 11 started the clock for White to timely file her grievance with DAS by March 18, 2019. White did not file her grievance with DAS until May 7, 2019.

ORDER

Because White's initial appeal was plainly not filed within the seven-day period prescribed by Iowa Code section 8A.415(2) and DAS subrule 61.2(6), and having rejected White's argument in resistance to the State's motion, we conclude that the State's motion to dismiss this disciplinary action appeal should be and is hereby GRANTED. The appeal is consequently DISMISSED.

DATED at Des Moines, Iowa, this 22nd day of April, 2020.

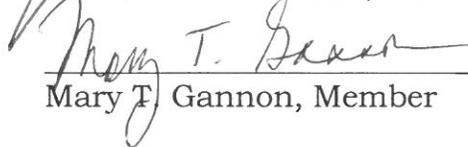
PUBLIC EMPLOYMENT RELATIONS BOARD



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Jamie K. Van Fossen, Member



Mary T. Gannon, Member

Original filed EDMS.